



SENATE JUDICIARY COMMITTEE

February 14, 2011

SENATE BILL 262

DOUBLE DAMAGES FOR ABUSE, NEGLECT EXPLOITATION

For the record, I am Rose Hughes, the Executive Director of the Montana Health Care Association, an association that represents long term care facilities and agencies throughout the state of Montana. This includes nursing homes, assisted living facilities and home care agencies.

We are here in opposition to SB 262.

SB 262 appears to create a new cause of action under the Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act (Elder Abuse Act), allowing individuals to file civil suits under the act and to collect double their actual damages and attorneys fees.

The Elder Abuse Act was never intended to create a civil cause of action. Section 52-3-802 states "legislative findings and purpose" of the act:

The legislature finds that a need exists to provide for cooperation among law enforcement officials and agencies, courts, and state and county agencies providing human services in preventing the abuse, sexual abuse, neglect, and exploitation of Montana's elderly persons and persons with developmental disabilities through the identification, reporting, and prosecution of acts of abuse, sexual abuse, neglect and exploitation.

The Act is intended to encourage health professionals to report suspected abuse, provides for the investigation of the allegations, for protective services for victims of abuse and provides for the involvement of county attorneys to prosecute abuse. The penalties provided are criminal in nature including imprisonment and fines.

The Elder Abuse Act was not intended to create a civil cause of action. Other statutes provide the basis for civil litigation, and there are many opportunities for lawsuits to be brought related to physical injuries caused by abuse or neglect.

We are concerned about the relationship between this proposed statute and statutes related to medical malpractice. Will this double the damages in medical malpractice cases against nursing homes when “neglect” is alleged?

Medical malpractice coverage is already very expensive. Any new law that results in increased premiums is bad for our facilities, for their residents and for their staff.

We believe that this proposal puts money in the hands of insurance companies and attorneys at the expense of using it to maintain high quality care for our residents and better wages for our staff. If this bill passes, the cost of long term care will go up.

Please vote “do not pass” on SB 262.

Montana Code Annotated 2009

52-3-802. Legislative findings and purpose. The legislature finds that a need exists to provide for cooperation among law enforcement officials and agencies, courts, and state and county agencies providing human services in preventing the abuse, sexual abuse, neglect, and exploitation of Montana's elderly persons and persons with developmental disabilities through the identification, reporting, and prosecution of acts of abuse, sexual abuse, neglect, and exploitation.

History: En. Sec. 2, Ch. 623, L. 1983; amd. Sec. 2, Ch. 198, L. 1989; Sec. 53-5-502, MCA 1989; redes. 52-3-802 by Code Commissioner, 1991; amd. Sec. 1, Ch. 167, L. 1993; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 1, Ch. 196, L. 1999.

